

FILED

APR 29 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 07-89124

MEMORANDUM AND ORDER

KOZINSKI, Chief Judge:

A complaint of misconduct has been filed against a magistrate judge of this circuit. Complainant, a pro se prisoner, filed a petition for a writ of habeas corpus that was referred to and is pending before the subject judge.

Complainant alleges that an order from the judge denying his “Motion for Order of Court’s Disposition” fails to mention the exhibits annexed to his traverse “as if [the exhibits] did not exist.” District court staff confirmed that the exhibits are in the court’s case file. The exhibits are also available in electronic form through PACER as attachments to document 47 on the docket. This charge lacks a factual foundation, so it is dismissed. 28 U.S.C. § 352(b)(1)(B).

Complainant also complains about delay in the handling of his habeas petition. His petition was filed in May 2004 and has been reassigned to several judges without a final determination. According to court staff, petitioner’s case

became ready for decision in November 2005, when the traverse was filed.

Delay is not misconduct unless the circumstances are extraordinary, as “where the delay is habitual, is improperly motivated or is the product of improper animus or prejudice toward a particular litigant, or, possibly, where the delay is of such an extraordinary or egregious character as to constitute a clear dereliction of judicial responsibilities.” Commentary on Rule 1 of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules).

Complainant has presented no evidence that the delay in his case is “improperly motivated or . . . the product of improper animus or prejudice” against him. However, under the applicable standard, we must also consider whether the delay is “of such an extraordinary or egregious character as to constitute a clear dereliction of judicial responsibilities.”

A limited inquiry into the allegations of the complaint discloses that the district where complainant’s case is filed has had an extremely high caseload and a severe shortage of judicial officers. As a consequence, many litigants must wait months or even years before their cases are addressed. While there is no evidence that the judges of that district have committed any sort of misconduct or dereliction of duty, it nevertheless remains true that many litigants are not being

adequately served. This situation calls for corrective action, under the authority of the Circuit Judicial Council, which is responsible for ensuring that justice in the courts of our circuit is dispensed fairly, efficiently and reasonably promptly.

Insofar as the litigants in even one of our districts are not being adequately served, all judges of our circuit bear the responsibility to rectify the situation. The backlog problem in the subject district is currently under serious review and steps are being taken to bring additional resources to bear, with an eye towards dramatically reducing or eliminating the backlog.

The inquiry is therefore concluded on the ground that corrective action is being taken. 28 U.S.C. § 352(b)(2).

DISMISSED in part and CONCLUDED in part.